

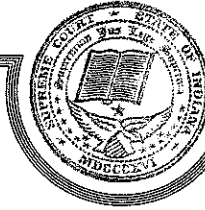
# SUPREME COURT

## DIVISION OF STATE COURT ADMINISTRATION

LORETTA H. RUSH, CHIEF JUSTICE

LILIA G. JUDSON, EXECUTIVE DIRECTOR

DAVID J. REMONDINI, CHIEF DEPUTY EXECUTIVE DIRECTOR



## OF INDIANA

30 SOUTH MERIDIAN STREET, SUITE 500  
INDIANAPOLIS, IN 46204-3568  
317.232.2542  
317.233.6586 FAX  
COURTS.IN.GOV

February 16, 2015

Mr. Paul Kiel  
ProPublica  
One Exchange Plaza, 23<sup>rd</sup> Floor  
New York, New York 10006

Re: Bulk Data Request

Dear Mr. Kiel

Your request, on behalf of ProPublica, to obtain bulk distribution of non-confidential court records from all Indiana trial courts using the Odyssey Case Management System has been approved by the Division of State Court Administration pursuant to Indiana Administrative Rule 9(F), subject to the terms of this letter and the executed User Agreement for Bulk Distribution of Data or Compiled Information, Form TCM-AR9(F)-1.

Indiana Administrative Rule 9(F)(2) places authority in the Indiana Supreme Court with respect to records from multiple courts such as those maintained in the Odyssey data repository. By Order dated September 13, 2011, *In the Matter of Bulk Distribution of and Remote Access to Court Records in Electronic Form*, Case No. 94S00-1109-MS-552, the Indiana Supreme Court authorizes bulk distribution of Odyssey records that are not excluded from public access by Administrative Rule 9(G) or (H), and authorizes the Division to review written requests for bulk distribution of Odyssey records and, if appropriate, approve such requests.

You are approved to receive bulk distribution of Odyssey records and the Division will provide bulk distribution of such records to you, subject to the following additional conditions: (1) You must make arrangements for payment for the records in accordance with Administrative Rule 9 and the Supreme Court's Order of September 13, 2011; (2) Your approval is subject to the executed User Agreement for the Use of Bulk Data from Indiana Odyssey Case Management System, and (3) You are prohibited from providing bulk distribution of Odyssey records to any third party.

An executed copy of your user agreement, Form TCM-AR9(F)-1, is enclosed. The agreement will expire on January 31, 2016. Please contact the Court Technology at 317.232.2542 in order to proceed with receipt of your data.

If you have any questions, please contact me at [richard.payne@courts.IN.gov](mailto:richard.payne@courts.IN.gov) or (317) 234-5398.

Sincerely,

Richard T. Payne  
Staff Attorney  
Trial Court Management

Enclosures:      User Agreement, Form TCM-AR(F)-1  
                         Odyssey Order Form



## **Indiana Supreme Court Division of State Court Administration**

### **USER AGREEMENT FOR BULK DISTRIBUTION OF CONFIDENTIAL DATA OR COMPILED INFORMATION EXCLUDED FROM PUBLIC ACCESS UNDER ADMINISTRATIVE RULE 9**

The parties to this agreement are the Indiana Supreme Court through its Division of State Court Administration (“Division”) and ProPublica (“Requesting Party”).

#### **Recitals**

Under Administrative Rule 9(F)(2), the Division is responsible for processing all requests for Bulk Distribution of Data or Compiled Information by Indiana Courts. The Division reviews each request for Bulk Distribution or Compiled Information to insure the request is consistent with the purposes of Administrative Rule 9 (“Rule 9”), resources are available to prepare the information and each request is an appropriate use of public resources.

The Indiana Supreme Court holds the software license and the rights and ownership to the Odyssey case management system for Indiana courts and clerks.

The Requesting Party has sought a Bulk Distribution of Data or Compiled Information that includes information excluded from public access under Rule 9, Sections G and/or H. The Requesting Party is willing to comply with restrictions on usage of the Data and Compiled Information. The Indiana Supreme Court has reviewed, considered and authorized the requested Bulk Distribution of Data or Compiled Information and entered an Order under Rule 9 (F)(4)(c) authorizing the Division to proceed toward delivery of the Bulk Distribution.

Requested data contained in the Odyssey case management system will be provided by the Division. If all or some of the requested data sought is not contained in the Odyssey case management system and the Requesting Party is not automatically entitled to the distribution of such Data or Compiled Information of a court simply by the approval of this user agreement by the Division Provision of Data or Compiled Information that is not contained in the Odyssey case management system must be determined by each court or clerk based upon a determination that the information sought is consistent with the purposes of Administrative Rule 9, that resources are available to prepare the information and that fulfilling the request is an appropriate use of public resources.

The Requesting Party may be required to the fair market value of the information requested as determined by the Division or a Court providing the information.

The Bulk Distribution is limited to court records even if the Requesting Party is seeking other information that is governed by other agencies’ policies.

In order to establish the respective functions and responsibilities of the Parties pertaining to the dissemination and use of Indiana court information under the provisions of Rule 9 of the Indiana Rules of Court, the parties now, therefore, agree as follows:

**1. Definitions.** For the purpose of this Agreement, the following terms shall have the meanings as set forth in Rule 9, section C: Administrative Record, Bulk Distribution, Case Record, Clerk of Court, Compiled Information, Court, Court Record and Public Access. The following terms shall be defined as stated:

**A. "Agreement"** means this User Agreement for Bulk Distribution of Data or Compiled Information, as well as any attachments or exhibits that may be affixed to this document or referenced within the agreement.

**B. "Data"** means any computer or machine-readable copy of Court Records provided by a Court to the Requesting Party.

**C. "Subscriber"** means a client or customer of Requesting Party to whom bulk Data or compiled information is provided or to whom access to bulk Data or Compiled Information is given.

**D. "Requesting Party"** includes the above-identified party and all entities and known names under which the business operates, all subsidiaries that will utilize the Data or Compiled Information provided and all names under which subsequent individual requests to courts shall be made.

**2. Records Approved for Distribution as Bulk Data or Compiled Information.**

**A. Court Records Sought and Approved.**

1. List of Courts:

a. Odyssey Courts: All

b. Non-Odyssey Courts: None

2. List of Records: Compiled Information, Extract of all civil cases filed for the period 2010 through 2014 providing case number, case style, date of filing, location, type (case), status and attorney names (plaintiff and defendant).

**B. Court Records Maintained in the Odyssey data repository.**

1. The Division will provide the Requesting Party the initial data extract of the approved records pursuant to the authorization order of the Indiana Supreme Court of September 13, 2011, Case Number 94S00-1109-MS-552. When the approved request requires more than a single extract of data, the Division will provide a monthly data extract thereafter on or before the tenth day of each month of the term of the approval.

2. The Division will provide the Requesting Party with an invoice for each extract if the Court or Division has determined that the Requesting Party shall pay reasonable costs of responding to the request for extracted data. All payments shall be made by check and payable to Division of State Court Administration bearing a notation of the invoice number and that payment is for Odyssey Bulk Records or Compiled Information.

3. The extracted data will be made available to the Requesting Party through an SFTP account accessing client specific folders at SFTP.IN.Gov.

**C. Court Records Not Maintained in the Odyssey data repository.**

Subject to specific permission from the Courts identified above that are not on the Odyssey Case Management System, the Division hereby grants to the Requesting Party restricted authorization to receive from such Courts the Court Records specifically identified above for the Requesting Party's use in accordance with the terms and conditions of this Agreement.

Execution of this Agreement and approval of the Requesting Party's request by the Indiana Supreme Court and the Division does not create any mandatory obligation on the part of any Clerk of Court or Court to provide Court Records to the Requesting Party. Under Rule 9(F), the individual non-Odyssey Courts must determine on an individual basis whether resources are available to transfer the Court Records to the Requesting Party and whether fulfilling the request is an appropriate use of public resources and is consistent with the purposes of Rule 9. The Courts must determine on an individual basis whether to assess a charge for providing the Court Records and may make the granting of the request contingent upon the Requesting Party paying an amount which the Court determines is the reasonable cost of responding to the request.

**3. Rights and Interests.**

All rights, title and interests, including all intellectual property rights, in and to the Court Records, data, code, application or any other information provided to the Requesting Party shall remain with the Courts. The Requesting Party shall not acquire any proprietary right to or interest in any Court Records, data, code, application or any other information provided to the Requesting Party under this Agreement, whether or not the Court's records, data, code, application or other information is incorporated in or integrated with in any way whatsoever with the Requesting Party's property, data, code, reports, application, program, system or any other sort of product. Such rights may not be transferred, assigned, or sold for any purpose to any person, corporation, partnership, association, or organization of any kind.

The Requesting Party shall provide the Division with the names of all entities that receive access to the data provided by the Division that are related in any way to the Requesting Party, including subsidiaries and affiliates, the names under which the Requesting Party is doing business and any other related entity names. The Requesting Party shall supplement this agreement within thirty (30) days of a change in the list of names provided to the Division as requested by this section.

**4. Ongoing Data Scrubbing and Update Requirements.**

The status of a Court Record may change over time and the Requesting Party shall refresh all records with each new extract received so that cases sealed or restricted since the last extract will be accurately reflected in the database.

The Requesting Party shall comply fully with Rule 9 and shall delete any Social Security Number, bank account number and any other confidential information that is inadvertently included in the Court Records and take other appropriate action to ensure that such confidential information is not disclosed to others. Upon notice, the Requesting Party shall comply with future orders to scrub data if they should arise.

## **5. Restrictions on Use of Data.**

### **A. Compliance with Authorities.**

The Requesting Party shall comply with all current and, as subsequently amended, federal and state laws, court rules, administrative rules and policies governing, regulating, and/or relating to Court Records.

### **B. Social Security Numbers, Dates of Birth and Addresses**

If the request includes release of social security numbers, dates of birth, or addresses, the information provided may include only the last four digits of social security numbers, only the year of birth, and only the zip code of addresses. The restrictions on release of social security numbers, dates of birth, and addresses may be waived only upon a petition to the Executive Director of the Division of State Court Administration and a finding of exceptional circumstances by the Indiana Supreme Court.

### **C. Resale of Data.**

The request that has been approved by the Indiana Supreme Court has been granted because the Requesting Party has a substantial interest or a bona fide research activity for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes.

The Requesting Party shall not:

- i. reproduce, resell or otherwise distribute, directly or indirectly, use, directly or indirectly, for the purpose of sale of a product or service to an individual or the general public, or
  - ii. copy or duplicate, other than as stated for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes
- the Court Records or Data provided under this Agreement. The Requesting Party shall not make Bulk Distribution of the Court Records or reconfigure the Court Records for subsequent Bulk Distributions.

### **D. Policies for Dissemination of Data.**

The Requesting Party shall not disseminate Court Records to the public through remote electronic access such as the Internet or other electronic method.

## **6. Reporting Requirement.**

With respect to Court Records not maintained in the Odyssey data repository, within thirty (30) days after the Requesting Party receives the first or only distribution of Court Records, the Requesting Party shall file with the Division of State Court Administration the Distribution Receipt Form, Form TCM-AR9(F)-3. However, the Requesting Party is not required to file with the Division a Form TCM-AR9(F)-3 for Court Records the Requesting Party receives from the Odyssey data repository.

## **7. Audits.**

The Division may, at its discretion, perform audits to verify compliance with the terms and conditions of this Agreement and the appropriate use of the Court Records. The Requesting Party shall cooperate with the Division in such audit.

A. The Requesting Party agrees that the Division may include “control” or “salted” data as a portion of the Court Records as a means to ensure that any personally identifiable information is not used for commercial solicitation purposes or in an indiscriminate and reckless manner.

B. The Requesting Party agrees to provide the Division with access, at no charge, to any database created using the Court Records for the purpose of monitoring and auditing contract compliance.

C. The Requesting Party agrees to provide the Division with copies of the materials and information the Requesting Party provides its subscribers, customers, clients, or other third parties.

## **8. Disclaimer of Warranties.**

The Division, Courts, and Clerks of Court provide no warranties, express or implied and specifically disclaim without limitation any implied warranties of merchantability and fitness for a particular purpose, with respect to the Court Records or Data provided under this Agreement. All Court Records and Data provided under this Agreement are provided “As Is”. The Division, Courts, and Clerks of Court further provide no warranties, express or implied, that the Court Records or Data is accurate, current, correct, or complete. It is expressly understood that it is the responsibility of the Requesting Party to verify the Court Records and Data with the official information maintained by the Court having jurisdiction over the Court Records.

**Reproductions of the Court Records or Data provided to the Requesting Party shall not be represented as a certified copy of the Court Record.**

## **9. Limitation of Liability.**

The Requesting Party acknowledges and accepts that the Court Records or Data are provided “as is” and may include errors or omissions and, therefore the Requesting Party agrees, that the Division, Courts, and Clerks of Court shall not be responsible or liable in any way whatsoever for the validity of the Court Records or Data. Specifically:

A. The Division, Courts, and Clerks of Court shall not be liable for any demand or claim, regardless of the form of action, for any damages resulting from the use of the Court Records or Data by the Requesting Party.

B. The Division, Courts, and Clerks of Court shall not be liable for any demand or claim, regardless of form of action, for any damages arising from incorrect or incomplete information provided under this Agreement.

C. The Division, Courts, and Clerks of Court shall not be liable to the Requesting Party or any other party for any loss, including revenue, profits, time, goodwill, computer time, destruction of data, damages or any other indirect, special or consequential damage which may rise from the use, operation, distribution, transfer or modification of the Court Records or Data.

## **10. Indemnification.**

The Requesting Party shall defend, indemnify, and hold harmless the Division, Courts, and Clerks of Court, their respective employees and agents, and the State of Indiana from and against all claims, demands, suits, actions, judgments, damages, loss or risk of loss (including expenses, costs, and attorney fees) of any and every kind and by whomever and whenever alleged or asserted arising out of or related to any use, distribution or transfer made of the Court Records or Data by the Requesting Party or any other parties.

## **11. Assignment.**

The Requesting Party may not, without the express written permission of the Division, transfer or assign: (i) this Agreement or any portion thereof; (ii) any right or benefit accruing to the Requesting Party under this Agreement; nor (iii) any claim arising under this Agreement.

## **12. Termination and Renewal.**

**A. General.** Either the Division or the Requesting Party upon thirty (30) days written notice may terminate this Agreement without cause.

**B. Renewal.** This agreement expires on **January 31, 2016**, subject to renewal upon request by the Requesting Party. Renewal Requests may be sent to the Division after **January 1, 2016**. The renewal shall be for one calendar year. The Division will post the Renewal Form on the Supreme Court website at <http://www.courts.in.gov/admin/2460.htm>.

### **C. Termination for Cause.**

The Requesting Party is responsible and liable for any violations of this Agreement by the Requesting Party or any officer, employee, agent, subscriber, customer, or client of the Requesting Party. The Division may, at its discretion, immediately terminate this Agreement upon a violation of the Agreement. Upon termination of the Agreement, the Requesting Party shall promptly return all court records and data to the Division. The Requesting Party is liable for damages for violations of this Agreement as authorized by law.

### **D. Termination for Nonpayment.**

The Division may immediately, without notice, terminate this Agreement if the Requesting Party fails to pay an invoice for costs associated with the preparation or transfer of the Court Records and Data outstanding longer than 30 days after Requesting Party's receipt of written notice of the outstanding balance.

### **E. Termination in Event of Assignment.**

The Division in its sole discretion may terminate this Agreement without notice if the Requesting Party transfers or assigns, without the express written permission of the Division: (i) this Agreement or any portion thereof; (ii) any right or benefit accruing to



the Requesting Party under this Agreement; or (iii) any claim arising under this agreement.

**13. Attachments.** This Agreement incorporates by way of attachment the following:

- A. A copy of the Order of the Indiana Supreme Court approving the Requesting Party's Request for Bulk Distribution of Confidential Data or Compiled Information as **Exhibit A**;
- B. The original Request provided to the Division from the Requesting Party as **Exhibit B**; and
- C. The approval letter provided to the Requesting Party from the Division as **Exhibit C**.

These Exhibits may be amended or modified and are required to be updated by the Requesting Party in accordance with the terms of this Agreement. The amendments and or modifications shall be incorporated into this Agreement by reference on the attachments.

**14. Applicable Law.**

This Agreement shall be interpreted and enforced in accordance with the law of the State of Indiana in an Indiana court of competent jurisdiction.

**15. Effective Date.**

This Agreement shall become effective and the terms herein shall become enforceable upon the date of execution of the last party.

**16. Authority to Execute Agreement.**

The undersigned individuals represent that they have the authority to execute this Agreement on behalf of their respective parties.

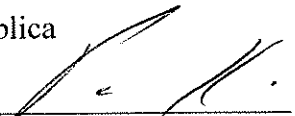
Indiana Supreme Court Division of State Court Administration

By: 

David J. Remondini  
Chief Deputy Executive Director

Date: 2-3-15

ProPublica

By: 

Paul Kiel

(Name)

Reporter

(Title)

Date: 2/9/15



## **Indiana Supreme Court Division of State Court Administration**

### **NOTIFICATION OF RECEIPT OF EXECUTED USER AGREEMENT FOR BULK DISTRIBUTION OF DATA OR COMPILED INFORMATION UNDER ADMINISTRATIVE RULE 9**

TO: Court Technology  
FROM: Richard T. Payne, Staff Attorney, Trial Court Management  
DATE: February 16, 2015

#### Notice of Bulk Data or Compiled Information Request User Agreement Receipt

STAD and/or the Indiana Supreme Court has approved a Request for Bulk Data or Compiled Information from ProPublica. The requested distribution involves data or information within the Odyssey Data Repository as follows:

Compiled Information; Extract of all civil cases filed for the period 2010 through 2014 providing case number, case style, date of filing, location, case type, status and attorney names for plaintiff and defendant.

ProPublica has been instructed to contact Court Technology in order to move forward. A copy of the executed User Agreement is attached.